

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re:	:	
LANA MARSIANO	:	BK No. 05-12488
Debtor	:	Chapter 7
	:	
KEVIN DeANGELIS	:	
Plaintiff	:	
	:	
v.	:	A.P. No. 05-1055
	:	
LANA MARSIANO	:	
Defendant	:	

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ORDER VACATING DEFAULT JUDGMENT, AND
DENYING DEFENDANT'S MOTIONS

APPEARANCES:

Jack D. Pitts, Esq.
Attorney for Plaintiff
PITTS & BURNS
635 Killingly Street
Johnston, Rhode Island 02919

Lana Marsiano, Pro se Defendant
1000 Providence Place, #425
Providence, Rhode Island 02903

BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

BK No. 05-12488; AP No. 05-1055

Heard on the Defendant Lana Marsiano's motion to vacate a default judgment determining her debt to the Plaintiff, Kevin DeAngelis to be nondischargeable. Marsiano attributes her default status to the fact that (1) she never received notice or service of process in the adversary proceeding, and (2) that she failed to attend the hearing on the Plaintiff's motion for entry of default judgment because she entered an incorrect date of the hearing on her schedule.

After considering the arguments of the parties, none of which addressed the dispositive issue, and upon the Court's *sua sponte* but belated review of the Amended Complaint and the request for default, I conclude that the Plaintiff did not meet the minimal Section 523 pleading requirements in the Complaint, and that the default was nevertheless entered improvidently.

The Amended Complaint asks that the debt be declared nondischargeable under "11 U.S.C. § 523(2)(A)." To begin with, there is no Section 523(2)(A) in the Bankruptcy Code, but even assuming a typographical error, and that the Plaintiff intended to reference Section 523(a)(2)(A), he failed to plead any specifics of the alleged fraud, as required by Fed. R. Civ. P. 9(b) which is incorporated into the Bankruptcy Code by Fed. R. Bankr. P. 7009.

BK No. 05-12488; AP No. 05-1055

Accordingly, the default judgment is VACATED, and the Plaintiff is ORDERED to file an amended complaint within 15 days from the date of this Order. All other pending motions which are not now relevant herein are DENIED as MOOT.

Dated at Providence, Rhode Island, this 10th day of October, 2006.

A handwritten signature in black ink, appearing to read "Arthur N. Votolato", is written over a horizontal line.

Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 10/10/2006